

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

¹ Petitioner separated from his wife approximately one year ago. Prior to that time, his wife was also part of the RUFA grant.

sanctions include not cooperating in job searches and not accepting community service placements. Department records document the following history:

- a) Job search 7/12/2004 unsuccessfully completed
- b) Conciliation 8/18/2004 unresolved
- c) Job search 7/27/2005 unsuccessfully completed
- d) Conciliation 9/02/2005 unresolved

3. On June 8, 2006, the petitioner entered a new Family Development Plan (FDP) with the Department. Petitioner's employment goal was sales/administrative. The FDP required petitioner (a) to begin job search with Diane Stevens, Department of Labor (DOL) Reach Up case manager, beginning June 27, 2006; (b) to arrange child care by June 30, 2006; (c) to meet monthly with his Reach Up case manager Maxine Holmes starting July 6, 2006; and (d) to meet a work requirement of twenty hours per week through July 27, 2006 with the caveat that if no work was found by that date, a community service placement (CSP) would be developed to meet the work requirement. The Department contracts with the DOL to work with Department case workers to help recipients implement their FDPs. Reach Up requirements can include meeting with both the Department and DOL.

4. Sales/administrative work is an appropriate goal for petitioner. At the hearing, petitioner testified that he has over twenty-seven years business experience. In addition, both Stevens and Peggy Heath, Economic Services supervisor, described petitioner as bright and capable.

5. Petitioner was scheduled to meet with Stevens on a regular basis as part of his job search. Petitioner did not attend the July 11, 2006 meeting with Stevens and did not call to cancel or reschedule. Stevens and petitioner later rescheduled that meeting and Stevens planned to start developing a CSP for petitioner.

6. Petitioner met with Holmes on July 27, 2006. Petitioner and Holmes had an acrimonious meeting due to disputes over petitioner's use of a clothing voucher the Department supplied petitioner to obtain suitable work clothing. Petitioner had used some of the voucher for child's clothing. Petitioner was asked to return the children's items and supply documentation to the Department. According to petitioner, he had the receipts but did not supply them because he was upset at how he was being treated by Holmes. Petitioner felt that Holmes treated him in a disrespectful manner. The case notes indicate that Holmes found the petitioner difficult. As of the hearing on

November 1, 2006, petitioner had not supplied the documentation.

7. Petitioner requested Heath to assign him to a new case manager because of the difficulties he experienced working with Holmes.

8. Heath assigned a new Reach Up case manager, Diane LeClair, to work with petitioner. Heath spoke to petitioner on July 31, 2006 to inform him of the caseworker change and to schedule his next appointment with LeClair. They negotiated the time of the next appointment to avoid a conflict with petitioner's move to permanent housing. Heath confirmed with petitioner that his appointment with LeClair was scheduled for August 7, 2006 at 1:00 p.m. A written notice was sent out that same day to petitioner informing him that his appointment was set for August 7, 2006. The appointment letter stated:

It is time to check in with your Reach Up worker. . .
If you are unable to make this appointment, please call your Reach Up worker prior to your appointment time to reschedule.

This meeting is very important, failure to attend or reschedule prior to the meeting date could result in conciliation or sanction.

9. Petitioner did not attend the August 7, 2006 meeting with LeClair and did not call to cancel or reschedule

the meeting. LeClair asked for a sanction authorization noting that petitioner had not attended his appointment or called to reschedule his appointment, that petitioner was not meeting his work requirement and that petitioner was not in a CSP.

10. The Department sent petitioner a notice that his RUFA grant would be reduced \$150 per month as a sanction for failure to comply with Reach Up requirements. Petitioner was scheduled to meet with LeClair on September 1, 2006 and notified that the sanction would continue until he complied with Reach Up requirements for two consecutive weeks.

11. On August 10, 2006, Heath spoke with petitioner. According to Heath, petitioner was angry about the sanction and thought the sanction stemmed from the dispute regarding the clothing voucher. Heath testified that she explained that the clothing voucher had nothing to do with the sanction but the missed appointment did. Heath testified that petitioner told her he forgot about the appointment. Petitioner requested a fair hearing with continuing benefits.

12. Petitioner's testimony about the August 7, 2006 appointment included thinking he had called LeClair around the time of the appointment or later to not reading the written notice of the appointment to believing he had not

received the notice prior to the appointment to confirming that Heath had set up the appointment during their July 31, 2006 telephone call. Petitioner testified that he did not think the August 7 appointment was mandatory. Petitioner's testimony regarding the August 7 meeting was not credible.

13. To cure the sanction, petitioner needs to be employed or in a CSP for twenty hours per week for two consecutive weeks. As of the date of the hearing, petitioner was neither employed or in a CSP.²

ORDER

The Department is affirmed.

REASONS

The Reach Up program is predicated, in part, on helping families become self-sufficient. Welfare Assistance Manual (W.A.M.) 2200. To do so, the Department and the adult recipient³ craft a Family Development Plan (FDP) that sets out the adult's work goal and the parties' respective responsibilities regarding activities, work requirements, and schedules. W.A.M. 2361.

² There was testimony of contacts between petitioner and the Department subsequent to the sanction notice, but there was no testimony about the purpose of these contacts or their impact on the petitioner's FDP or sanction.

³ These provisions also apply to minor parents receiving RUFA assistance.

The adult is required to comply with the requirements of the FDP. W.A.M. 2362.1. Included in the "types of noncompliance" are failure to attend or participate in FDP activities and failure to meet the work requirement. W.A.M. 2370.1. When the adult does not comply with FDP requirements, the adult's family may face financial sanctions. The Department's first response is to try the conciliation process unless the adult has already had two conciliations within a sixty month period. W.A.M. 2371, 2372. Petitioner has had two failed conciliations and prior sanctions. Under the regulations, sanctions are an appropriate response provided there is not good cause. Good cause is defined at W.A.M. 2370.32.⁴ Good cause was not established in petitioner's case.

Petitioner was not in compliance with his FDP. Petitioner had not completed job search, had not been working, and had not found child care. Further, Petitioner missed an appointment on August 7, 2006 with his new Reach Up case manager. As of the date of the hearing, petitioner had

⁴ Good cause includes emergencies including family emergencies, inability to arrange transportation to a scheduled activity, mandatory court appearances, etc.

not cured the sanction although he had the opportunity to do so.⁵

Petitioner's noncompliance cannot be looked at in a vacuum. Petitioner's history with the Department is replete with instances of noncompliance and sanctions. Petitioner's present noncompliance with his June 8, 2006 FDP is part of a larger pattern of repeated noncompliance.

Petitioner has argued that sanctions should not apply because he has not received appropriate notice. Petitioner argues that the notice of the August 7, 2006 meeting was not detailed enough to let him know the consequences if he failed to make the meeting and argues that the sanction notice did not adequately apprise him of the reason for a sanction.

Petitioner's arguments are problematic and can be characterized as disingenuous given his history.

Petitioner should be aware of the consequences of not following through with notices and his FDP. The meeting notice, in particular, included mention that the meeting was important and that he could face sanctions if he did not appear. Because good cause determinations are possible, the notices cannot conclusively state that sanctions will follow.

⁵ It is hoped that the petitioner has been using the time subsequent to the hearing to cure his sanction.

The notice of the meeting provided sufficient information to the petitioner of his obligation to attend the meeting and the possible consequences if he failed to do so.

In terms of the sanction notice, the Department is obligated to give notice that explains the action taken, the reason for the action, and the right to appeal. W.A.M. 2372.1 and 2380.1. "[N]otice in an administrative proceeding need only be reasonable, and need not meet the exacting requirements for notice in judicial proceedings." *In Re Hot Spot, Inc.*, 149 Vt. 538, 540 (1988). See also *In Re: Vermont Health Corp.*, 155 Vt. 457, 460 (1990) stating "[f]or notice to be adequate, it is enough 'that the parties be sufficiently apprised of the nature of the proceedings so that there is no unfair surprise.' *North State Telephone Co. v. Alaska Public Utilities Comm.*, 522 P.2d 711, 714 (Alaska, 1974)."

Petitioner was apprised that his RUFA grant was being sanctioned for failure to comply with his FDP. He was informed how to cure the sanction and he was informed how to appeal the sanction. Petitioner received notice that apprised him of the nature of proceedings and that prevented unfair surprise. In addition, petitioner had adequate opportunity to prepare and respond at the fair hearing. See

In Re: Petition of Twenty-four Vermont Utilities, 159 Vt.363 (1992) upholding a challenge to the sufficiency of notice, in part, because the parties had adequate opportunity to prepare and respond.

Based on the foregoing, the Department's decision to sanction petitioner was in accord with the above regulations. The Department should be affirmed. 3 V.S.A. §3091(d), Fair Hearing Rule No. 17.

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